

## **Discrimination Complaint Procedure Bureau of Reclamation Mid-Pacific Region**

Effective Date: August 8, 2006

This procedure is provided to ensure a common understanding of the manner in which complaints of discrimination are handled in the Mid-Pacific Region. Managers, supervisors, the Equal Employment Manager, and Equal Employment Opportunity (EEO) Counselors are responsible for understanding and implementing these procedures. The procedure is available to all employees as part of the Regional EEO Policy.

Program Responsibility: The Regional Director is responsible for ensuring that a vigorous and effective EEO program is carried out in a positive manner. Through delegation and performance evaluation, every manager and supervisor shares in the responsibility for program implementation, ensuring that the work environment and all employment policies and practices are free from unlawful discrimination and harassment. When an allegation of unlawful discrimination arises, managers and supervisors must attempt resolution of the matter at the earliest possible time. The Equal Employment Opportunity Office (MP-116) is responsible for administering the discrimination complaint process in compliance with 29 CFR 1614. The Human Resources Office is responsible for furnishing personnel documents requested by EEO Counselors, EEO Investigators, and the Office of the Solicitor.

Program Staff: The Equal Employment Manager has responsibility to receive and process complaints of employment discrimination filed against the Mid-Pacific Region by employees, former employees, or applicants for employment. Complaints must be processed and investigated fairly, thoroughly, and expeditiously in accordance with Federal laws, regulations, and Department of the Interior (DOI) policies. The Equal Employment Manager ensures applicants and employees as well as managers and supervisors are aware of their rights, protections, and responsibilities in the discrimination complaint process. The Equal Employment Manager administers the discrimination complaint process with the assistance of collateral duty and contract EEO Counselors.

As neutral third-parties, EEO Counselors inform employees and supervisors about the discrimination process, perform general fact-finding, and assist in the resolution of issues in the pre-complaint stage. Counselors must meet basic skill requirements and are selected from Interest Announcements issued periodically. They receive regular specialized training. Their work is performed on a collateral-duty (20%) basis under the direction of the Equal Employment Manager and evaluated annually. EEO Counselors will at all times be free from restraint, interference, coercion, discrimination, and reprisal.

Program Objectives: The discrimination complaints process is administered for the purpose of affording employees, former employees, and applicants for employment their rights under EEO laws and regulations. The objective is to address and resolve matters as early in the process as possible. Relief for a complaint of discrimination need not be based on a single, proven act of intentional discrimination. If an action is not overtly or intentionally discriminatory but results in a disparate treatment of a protected class, or establishes a pattern of discrimination, it cannot be tolerated.

In the pre-complaint stage, matters are addressed without a formal finding of discrimination. Relief may include any appropriate remedy provided by law. During the formal stage, efforts to resolve the matter can continue even as the Equal Employment Opportunity Commission (EEOC) or DOI Office of Civil Rights (OCR) reviews the case. Remedial actions may include back pay, retroactive promotion, or other

action appropriate to the matter, along with corrective action to eliminate the discriminatory effects on other employees or applicants for employment.

Disposition of Complaints: The procedure for processing complaints of discrimination based on race, color, religion, sex, national origin, age, disability, or reprisal provides for the impartial consideration of a complaint within the DOI and appeal rights to the EEOC and U.S. District Court. (Appeal rights for complaints based on sexual orientation and genetic information are to the DOI Office of Hearings and Appeals. Complaints based on status as a parent are not covered by EEO procedures but may be pursued under other formal avenues of redress depending on the circumstances.) In accordance with 29 CFR 1614, the administrative process described in Departmental Manual release 373 DM 5 includes two stages: the pre-complaint and formal complaint. At all stages of the process, employees and their designated representatives will be allowed a reasonable amount of official time to pursue the complaint.

Notification: Once an employee, former employee, or applicant for employment (Aggrieved) has entered the counseling process, the Equal Employment Manager will notify management officials with a need to know (i.e., manager of office where discrimination is alleged to have occurred). The EEO Counselor will notify the alleged discriminating individual in the course of fact-finding and seeking a resolution. If the Aggrieved requests anonymity, then the appropriate management officials will be advised of the complaint, but not the name of the Aggrieved. In the formal complaint stage, these officials as well as witnesses will be notified by the Equal Employment Manager and the EEO Investigator of their required participation.

Pre-complaints:

1. The Aggrieved must first counsel with an EEO Counselor to seek a solution of the matter before a formal complaint of discrimination can be filed.
2. The Aggrieved must bring the alleged discriminatory matter to the attention of the Equal Employment Manager or an EEO Counselor within 45 calendar days of the date of the incident, or the effective date of a personnel action, or the date that the Aggrieved knew or reasonably should have known of the event or personnel action.
3. An EEO Counselor will be assigned and make a general inquiry into the matter, counsel the Aggrieved on his/her rights in the process, seek a solution on an informal basis, and when practicable conduct a final interview not later than 30 calendar days from the date counseling begins. The Aggrieved may agree to extend the counseling period for a period of up to an additional 60 days. The agreement to extend the counseling period must be in writing and may be terminated by the Aggrieved at any time.
4. The EEO Counselor will advise the Aggrieved of the option to pursue resolution of the matter through Alternative Dispute Resolution (ADR). If the Aggrieved elects mediation, he/she must agree in writing to a 60-day extension of the pre-complaint process. The Equal Employment Manager will arrange for an independent, professional mediator to conduct the ADR process.
5. If the matter is not resolved, the EEO Counselor will advise the Aggrieved verbally and in writing of his/her right to file a formal discrimination complaint. The complaint must be filed in writing with the Equal Employment Manager or other designated DOI EEO official within 15 calendar days of the notice of final interview.
6. At any stage in the presentation of a complaint, the Aggrieved has the right to be accompanied, represented, and advised by a representative of his/her own choosing, provided the representative

does not have a conflict of interest in the matter. EEO Counselors or other EEO officials shall not act as representatives. To be properly recognized, the designation of a representative must be submitted in writing to the Equal Employment Manager.

7. Throughout the process, the Aggrieved will be encouraged to seek resolution. In addition, management officials will be receptive to reasonable offers of settlement on the part of the Aggrieved.

Formal Complaints: The Equal Employment Manager is responsible for reviewing EEO Counselor's Reports, accepting or dismissing formal complaints, contracting for independent EEO Investigators to prepare Reports of Investigation, and keeping a Complainant apprised of the rights to request a decision from the EEOC or the DOI OCR and subsequent appeals. A formal complaint must be received from the Complainant within 15 calendar days of receipt of the Notice of Final Interview and Right to File a Discrimination Complaint (NOFI) from the EEO Counselor. The EEO Counselor must submit an EEO Counselor's Report within 15 calendar days after notification that a formal complaint has been filed, after which time the EEO Counselor is no longer involved in the process. The EEO Counselor's Report is provided to the Complainant as an attachment to the letter that accepts or dismisses the complaint.

Class Complaints: A "class" is a group of employee or applicants who allege discriminatory practices by an agency based on their common race, color, religion, sex, national origin, age, or physical or mental disability. Class complaints are processed according to 29 CFR 1614.204, which requires that the administrative processing be conducted by the EEOC rather than the agency. An Aggrieved who wishes to be an agent for the class and who believes he/she was subjected to prohibited discrimination must consult with a class complaint EEO Counselor within 45 days of the matter or action. The Aggrieved should contact the Equal Employment Manager for specific information.

Settlements: As appropriate, the Equal Employment Manager and management officials will continue settlement efforts throughout the process. In the event a settlement is reached in the pre-complaint stage, the Equal Employment Manager will prepare the written, no-fault agreement using the DOI format. In the case of ADR, the Mediator will also be involved. As necessary to the agreement's implementation, the Human Resources Office, the Solicitor's Office, and other appropriate management officials may be asked to review and sign the agreement. If a resolution is not obtained, the EEO Counselor will issue the Notice of Final Interview and Right to File a Discrimination Complaint or obtain a signed Withdrawal of Complaint, should the Aggrieved decide to drop the matter.

If a settlement is reached in the formal stage prior to adjudication by the EEOC or a decision by the DOI OCR, the written agreement will be prepared in coordination with the Solicitors Office using the DOI format, and reviewed and signed as outlined for the pre-complaint stage.

Administrative Costs: The costs of administering and settling pre-complaints will be covered by MP-116, and the costs for formal complaints will be borne by the primary organization unit within the Region involved in the complaint.

Contacts: For questions regarding the Discrimination Complaints Procedure, call Marian Echeverria, Equal Employment Manager, at 916-978-5571 (TDD 978-5608).